

IN EQUITY.

EXECUTORS OF WILLIAM A. ALSTON,

vs.

} *BILL*
to have *Trusts of Will*
declared.

WILLIAM A. ALSTON, AND OTHERS.

Filed 24th December, 1860.

PETIGRU & KING,

Complainant's Solicitors.

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1860.

IN EQUITY.

THE STATE OF SOUTH-CAROLINA, }
CHARLESTON DISTRICT. }

To the Honorable the Chancellors of the said State :

Humbly complaining, your Orators, Alexander Robertson, John Freer Blacklock, and William Alston Pringle, Executors of the last Will and Testament of William Algernon Alston of All Saints, Esq., deceased ; Show to your Honors : That Joseph Alston, late Governor of South-Carolina, devised all his Estate, after payment of debts and legacies, to his brothers, John Ashe Alston and William Algernon Alston; and made them Executors; and they proved his Will and paid all his debts and legacies ; and on the 10th day of October, 1816, entered into a family settlement of the Estate which they held under their said brother's Will, for the purpose of complying with the intention which he had communicated to them in his life-time, and confided to their integrity. By this settlement, which took the form of a mutual Will, William Algernon Alston, the above named testator, devised to the use of his son Joseph Alston, during his life, a plantation called the "Point," and certain lands in Greenville, with remainder to his eldest son living at his death that should attain the age of twenty-one years, in fee. But if the eldest son should die in his father's life leaving issue male, then to the use of the eldest son of such eldest son at the age of twenty-one years in fee. And in case of the death of the eldest son of Joseph in his father's life-time, leaving no son alive, or no

son that should survive Joseph and attain the age of twenty-one years; then to the use of the second, and every other son of the said William A. Alston, in succession for life, with the same remainders and limitations over as are declared of the Estate of the first son; and in case of the failure of such son, or grandson, of the said William A. Alston, then to the daughters in succession for life, with similar remainders and limitations to their issue, and in case of the failure of issue of his daughters, to his brother John Ashe Alston, in fee. And to the same uses he gave all the negroes and all sorts of personal estate, belonging to the "Point" plantation, and subjected the real estate to the condition, that if, by the arrangement of John Ashe Alston's part of said Will, the real estate therein mentioned should happen to pass to him or his family, then the real estate settled by him in his part of the Will should shift to the subsequent uses in the Will of John Ashe Alston. That by the same instrument, John Ashe Alston devised a plantation called the "Oaks," and all the other property which came to him by the Will of his brother, the Governor, to his son Thomas Alston during his life, with remainder to the eldest son or grand-son of the said Thomas Alston that should attain the age of twenty-one years, with limitations and remainders, which are followed by those already mentioned in William A. Alston's corresponding Will, as their type or model, except that in John Ashe Alston's part, the Real Estate passes to the male line of his brother in preference to his own daughters or their descendants.

Your Orators further show to your Honors, that John Ashe Alston died on the 27th day of December, in the year 1831, leaving his son Thomas Alston surviving him, who married Josephine, the daughter of said William A. Alston, and entered and was possessed of the "Oaks," and other estate, so devised as aforesaid, during his life, and died about the 17th day of July, in the year 1835, leaving a son, Joseph Alston, Jr., an infant of tender years, and no other issue. That the said Joseph Alston, Jr., attained the age of twenty-one years on the 12th day of June, in the year 1855, whereby the Estates settled by John Ashe Alston by

the said instrument of the 10th day of October, 1816, vested in fee simple in the said Joseph Alston, Jr., and all the subsequent limitations were defeated. That afterwards, on the 18th day of May, 1854, the said William A. Alston, and his son Joseph Alston, came to an agreement concerning the property of Governor Alston and the settlement of 1816; and in consideration of the delivery of 165 negroes, being the original stock, and the increase of the negroes derived by W. A. Alston from Governor Alston, and a conveyance of five plantations of great value, the said Joseph Alston covenanted, among other things, that the said William A. Alston should have full power to dispose of the Greenville lands, and the "Point" plantation, and that he would save him harmless against all claims upon the same on the part of him or his descendants. And afterwards, on the 16th day of July, in the year 1856, William Algernon Alston, Jun., son of the said Joseph, confirmed the said agreement, and released all his interest in the Greenville lands and the "Point" plantation, to the said William A. Alston. That the said William A. Alston afterwards made his last Will and Testament, in the following words :

STATE OF SOUTH-CAROLINA :

I, WILLIAM ALGERNON ALSTON, Sen., of the Parish of All Saints, in the said State, do affirm this to be my last Will and Testament, as set forth with my own hand. My former joint Will with my brother John's was virtually effectuated, in advance a good while ago, and by that joint Will my son Joseph, and his son, have been well provided for; and my next grand-son, Joseph Alston, Jr., has been amply provided for also by the joint Will of his other grand-father, John Ashe Alston: Wherefore, having to provide for many others, for my deceased son John's large family, and my daughter Mary's family, and my other two daughters, I now think proper to reserve for these others my remaining Estate, to the exclusion of my son Joseph, and his son, and my grand-son, Joseph Alston, Jr.; and I hereby order this and strictly will it, hoping

that neither of the latter can think it hard that I do not give to them what is required more by the many others ; but I except from this arrangement the lands called "Turkey Hills Sea Shore," and "Boone's Savannah," and give these lands to my grand-son, Joseph Alston, Jr., as sold me publicly by the Commissioner in Equity, Solomon Cohen, Esq.

I bequeath to my daughters Charlotte and Anna, jointly, the sum of twenty thousand (\$20,000) dollars, or satisfactory stocks of that amount, and wish my Executors to place the same at the disposal of my said daughters as soon as they, the Executors, can raise the means with the Estate's paper on suitable credit—such credit as might possibly be essential, in view of the Wills, other intents and bearings. And in addition to my past gift to them of the House in Charleston, with its pertainments, I now give those daughters, Charlotte and Anna, and their heirs, my House in Greenville District, with the contents, and two-thirds of my Greenville lands, to be divided by a line drawn in such direction as the daughters may choose. I also give the said daughters that piece of land hereinafter described on the seaward side of Clifton Tract, with a House now on it and a Barn, a spot to their fancy, for a Lodge, and for horticultural purposes, the place to be subject to their own unrestricted testamentary disposition, or in failure thereof to be then taken by the heirs or heir of Clifton. And I allow those daughters the use of the North House at the Beach, belonging to Rose Hill's tract, for and during their lives, with such grounds on the Island as they may desire, and with whatever of the plantation growth they in their discretion may require for the table, in either House, sea side or river side, and for their servants and horses ; no turn of affairs ever to effect the right of my daughters to use the Beach House, and the Estates' workmen to keep it in repairs, and also the appurtenances. And I give absolutely to the said daughters, Charlotte and Anna, these slaves : Alfred and Rachel, Lanceford, Cibby Campbell, Peggy and Evey, Peter and Nelly, in charge of the House in Town ; Neptune and Sarah, in charge of the Greenville House, together with my carriage, and the horses in stable ; and I

would that no inventory be made of the pertaintments to either House. This last Will cancels all former Wills, except my joint Will with my brother John's Will.

W. A. ALSTON.

Signed, published and declared, as and for his last Will, by the Testator, in our presence, who, in his presence, and the presence of one another, at his request, have hereto subscribed our names, this thirty-first day of August, in the year of our Lord one thousand eight hundred and sixty.

ALEX. GLENNIE,
ANDREW HASELL,
CHARLES ALSTON, Sr.

And that after the said Will was executed, the following codicil was added :

Whereas, I, William A. Alston, having made and duly executed my last Will and Testament, in writing, bearing date the thirty-first day of August, in the year of our Lord one thousand eight hundred and sixty, now I do hereby declare this present writing to be as a codicil to my said Will, and direct the same to be annexed thereto, and taken as a part thereof. I do hereby ordain, constitute and appoint my friends, Alexander Robertson and John F. Blacklock, and my nephew William Alston Pringle, Executors of my last Will and Testament.

W. A. ALSTON, Sen. [L.s.]

Signed, sealed and declared, by the said William A. Alston, as and for a codicil to be added to, and to be considered as a part of his last Will and Testament, in the presence of us, who have subscribed our names in his presence, this tenth day of September, in the year of our Lord one thousand eight hundred and sixty.

ALEX. GLENNIE,
ANDREW HASELL,
CHARLES ALSTON, Sr.

That the said William Algernon Alston afterwards, on the 16th day of September last, departed this life, leaving his

said Will and Codicil in full force, and the same was proved by your Orators, who undertook the burthen of the execution thereof. That Joseph Alston, the Testator's son before mentioned, died on the 26th day of September last, without wife or widow, intestate, leaving one son, William Algernon Alston the younger, him surviving; that the said William Algernon Alston the younger, in his grand-father's life, attained the age of twenty-one years, whereby the Estates settled by the Testator's part of the instrument of 1816, vested in him, in fee, and all subsequent limitations and remainders were defeated; and your Orators are advised, that by virtue of his confirmation and release aforesaid, his estate in the "Point" plantation and Greenville lands, on the death of his father, vested in his grand-father. That the Testator, William Algernon Alston, left issue besides his son Joseph Alston aforesaid, and his grand-sons, William Algernon Alston, Jr. and Joseph Alston, Jr.; his daughters, Mary, wife of Seaman Deas of North Santee, physician, Charlotte Alston and Anna Alston; and Fanny Alston, the widow, and Theodosius, John Ashe, Washington, Helen, Algernon, Fanny, Rowland, and Thomas, the sons and daughters of his deceased son John Ashe Alston; all of whom the said sons and daughters are infants under the age of twenty-one years. That the Testator was possessed of a great Estate, and indebted in many large sums of money, which may necessitate or render expedient the sale of a part or the whole of his Estate not specially reserved. That your Orators are willing to execute the trusts of the said Will, but are met by many difficulties, and cannot fulfil their trust without incurring the risk of a devastavit, unless protected by the direction of this Honorable Court. That your Orators are advised, that their views respecting the "Point" plantation and Greenville lands are controverted. That there is uncertainty respecting the residue of the Testator's Estate, both as to the Estates which constitute the residue and as to the persons entitled to it.

That the Will of the Testator has not in express terms devised the residue of his Estate to any person, and that it cannot be ascertained of what the residue consists until the

construction of the Will is settled. That the construction of the Will involves the rights of the widow and children of his son, John Ashe Alston, deceased. That the Will has not shown, by express declaration or by necessary implication, what is meant by the family of the said John Ashe Alston, or the family of his daughter, Mary Deas, nor how the members of said families should take, nor what it is that they are to take, under the words of the Will in which they are mentioned. That the Testator has not expressly declared his intention, whether his daughters, Charlotte Alston and Anna Alston should take the property bequeathed as their share or portion, or as an accumulative gift. That all the children and grandchildren of Testator, and their families, are interested in these questions ; and that your Orators are unable to act in the premises without incurring the penalties of a breach of trust, a risk against which, as Trustees, they have a right to be protected by this Honorable Court.

IN TENDER CONSIDERATION WHEREOF, and inasmuch as they are remediless at law, and can receive relief only in this Honorable Court—*To the end, therefore*, that the said William Algernon Alston, Joseph Alston, Jr., Charlotte Alston, Anna Alston, Seaman Deas, and Mary his wife, Fanny Alston, widow, and Theodosius Alston, John Ashe Alston, Washington Alston, Helen Alston, Algernon Alston, Fanny Alston, Rowland Alston, and Thomas Alston, children of John Ashe Alston, deceased, may full, true and perfect answer make to the premises, that the trusts of the Testator's Will may be declared, as well as the rights of the parties not only under the foregoing Will, but also under the instrument of 1816, as far as your Orators' duty in the premises is concerned; and your Orators may receive such other and further relief as the nature of this case may require, and to your Honors may seem meet,

MAY IT PLEASE YOUR HONORS, to grant unto your Orators a writ of *Subpœna ad Respondendum*, to be directed to the said William Algernon Alston, Joseph Alston, Jr., Charlotte Alston, Anna Alston, Seaman Deas, and Mary his wife, Fanny Alston, widow, and Theodosius Alston, John Ashe Alston, Washington Alston, Helen Alston, Algernon Alston, Fanny

Alston, Rowland Alston. and Thomas Alston, commanding them at a certain day, and under a certain pain therein to be inserted, personally to be and appear in this Honorable Court, then and there to answer to the premises, and further to stand to and abide by such order, direction and decree in the premises, as to your Honors may seem agreeable to Equity and good conscience.

And your Orators will ever pray, &c.

PETIGRU & KING,
Compl'ts Sol's.

